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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 26, 2002

APPLICATION OF

KINDER MORGAN VIRGINIA, LLC

CASE NO. PUE010722

For authority to construct  
and operate an electric generating  
facility in Cumberland County

ORDER FOR NOTICE AND HEARING

On December 27, 2001, Kinder Morgan Virginia, LLC ("Kinder Morgan" or "Company"), filed with the Clerk of the State Corporation Commission ("Commission") its application for a certificate of public convenience and necessity to construct and operate an electric generating facility pursuant to §§ 56-265.2 and 56-580 D of the Code of Virginia. Pursuant to our Order in Case No. PUE010313, § 56-265.2 is no longer applicable to this application, having been supplanted by Code § 56-580 D.<sup>1</sup> Thus, we will treat this application as if filed under the latter provision.

Kinder Morgan proposes to construct a 560 megawatt natural gas-fired electrical generation plant ("facility") at a site in Cumberland County, Virginia, to commence operations by the third

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<sup>1</sup> Commonwealth of Virginia At the relation of the State Corporation Commission Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities, Case No. PUE010313, Document Control Center No. 010810174, slip op. (August 3, 2001).

quarter of 2004. The facility, as proposed, will have seven combustion turbines, and two steam turbines. The facility's principal structures will consist of a building containing the turbines and associated boilers, cooling towers, an electrical substation and an administrative/warehouse building. The Company states that it plans to operate the plant up to 16 hours per day, and up to six days per week to provide intermediate load power. The plant is also intended to provide smaller amounts of base load and peak load power.

The facility is proposed to be constructed on a site of approximately 34 acres that is owned by Cumberland County ("County"), and is located adjacent to a now-closed County landfill. The site's location is described as southwest of the intersection of State Routes 45 and 690 in the northeastern region of the County. Cartersville, Virginia, said to be the closest community of any size near the site, is situated approximately 3 miles away on the James River.

The Company's application also describes the site's proximity to electric transmission facilities, water, and gas pipelines. The site is adjacent to an existing utility easement in which Dominion Virginia Power operates a 230 kV electric transmission line that will provide access to the electric transmission grid. Natural gas for the proposed facility will be piped approximately 23 miles from Transco's Mainline lateral pipeline. Water for the proposed facility will be piped approximately 6 miles from the James River. The application

also notes that the County's Board of Supervisors issued a conditional use permit for the project on October 29, 2001.

With respect to the proposed facility's generation output, the application states that the electricity produced by this generation facility will be transferred through an energy conversion services arrangement to a major power marketing company not affiliated with Kinder Morgan, or the power will be sold on a wholesale basis.

The Company also states in this application that energy produced by this facility will not be sold by the Company to retail electric customers in the Commonwealth. Consequently, the Company asserts that it should be exempted from the Commission's ratemaking authority under Chapter 10 of Title 56 of the Code of Virginia. The application further provides that the facility will not be in the rate base of any utility whose rates are established under Chapter 10 of Title 56.

Finally, the application states that construction of the facility will be in the public interest. To that end, the application asserts that the proposed facility will provide economic benefits and opportunities to Cumberland County and the surrounding areas. The application further asserts that it will enhance the competitive market for wholesale electricity in Virginia. Additionally, the application declares that the proposed facility will aid the delivery and reliability of electric power in the Commonwealth, and that it will be constructed and operated to minimize any adverse environmental impact.

The Company also requests that the Commission grant it interim authority to undertake preliminary construction work and to make financial commitments to the construction of the project in advance of Commission approval of this application. This authority is requested under the provisions of Va. Code § 56-234.3.<sup>2</sup> According to the Company's application, these activities will be undertaken at the Company's own risk and will not adversely affect any Virginia retail customer.

The application indicates that preliminary site clearing is scheduled to begin July 1, 2002; construction is scheduled for the third quarter of 2003. The plant is scheduled to commence commercial operations by July 1, 2004.

Finally, the Company requests that the provisions of 20 VAC 5-302-10<sup>3</sup> requiring 30 days advance notice of the filing of this application be waived.

The Commission finds that the application should be docketed. We further find that notice of this application should be given to the public and that interested persons should have an opportunity to comment or to participate in this matter. We also find that the matter should be assigned to a hearing

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<sup>2</sup> As noted, *infra*, the Commission has determined that this code section has been supplanted by the provisions of § 56-580 of the Code of Virginia as of January 1, 2002.

<sup>3</sup> 20 VAC 5-302-10 was amended in Case No. PUE010313 to eliminate this requirement. Nevertheless since the Company filed its application prior to January 1, 2002, when amendments to 20 VAC 5-302-10 became effective pursuant to the Commission's December 14, 2002, Order in that case, the 30-day notice requirement is technically still applicable, and we will address the Company's request for a waiver therefrom.

examiner and that a public hearing should be held on the application.

With respect to its request for authorization to commence site preparation in advance of this Commission's approval of its application, the Company raises an issue with respect to pertinent law in effect on and after January 1, 2002. As discussed in our Order Adopting Rules and Prescribing Additional Notice of December 14, 2001, in In re: Amending Filing Requirements for Applications to Construct and Operate Electric Generating Facilities, Case No. PUE010313 (Document Control No. 011220335) at 2, the Commission has determined that §§ 56-234.3<sup>4</sup> and 56-265.2<sup>5</sup> of the Code of Virginia have been supplanted by

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<sup>4</sup> § 56-234.3. Approval of expenditures for and monitoring of new generation facilities and projected operation programs of electric utilities.

Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor . . . . The Commission shall review the petition . . . and determine whether the proposed improvements are necessary. . . .

<sup>5</sup> § 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service . . . without first having obtained a certificate from the Commission . . . . Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties.

§ 56-580 D of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"). The supplanted provisions, read together, required public utilities to secure Commission approval in advance of construction or acquisition of generating facilities. Commission permission for construction and operation of generating facilities continues to be required under § 56-580.

The Commission concludes that an applicant may commence preliminary site preparation and other related activities in advance of receiving Commission approval. We expect the Company to limit its activities to those permitted by federal, state, and local law. In addition, no construction of permanent facilities can be undertaken without further Commission approval.

Finally, we will grant the Company's request for a waiver of 20 VAC 5-302-10 which, prior to its amendment effective January 1, 2002 (in Case No. PUE010313), required the Company to notify the Commission of its intent to file a petition to construct generating facilities at least 30 days prior to its filing.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-580 D, 56-46.1, 56-596 A and related provisions of Title 56 of the Code of Virginia, the Company's application be docketed as Case No. PUE010722, and all associated papers be filed therein.

(2) A public hearing be held on July 9, 2002 at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the application. Any person not participating as a respondent as provided in Ordering Paragraph (5) below, may give oral testimony concerning the application as a public witness at the July 9, 2002, public hearing. Such public witnesses desiring to make statements at the July 9, 2002, public hearing concerning this application need only appear in the Commission's second floor courtroom in the Tyler Building at the address set forth above.

(3) As provided by § 12.1-31 of the Code of Virginia and the Rules of Practice, 5 VAC 5-20-120, *Procedure before hearing examiners*, a hearing examiner be appointed to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.

(4) On or before March 8, 2002, the Company may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of any additional testimony and exhibits by which it expects to establish its case.

(5) On or before April 4, 2002, any person desiring to participate in this proceeding as a respondent shall file with the Clerk at the address set out in ordering paragraph (4) an original and fifteen (15) copies of a notice of participation as a respondent, as required by the Rules of Practice, 5 VAC 5-20-

80 B, *Participation as a respondent*, and shall serve a copy on counsel to the Company, Donald G. Owens, Esquire, Troutman Sanders Mays & Valentine, LLP, P.O. Box 1122, Richmond, Virginia 23218-1122, and on Commission Staff counsel assigned to the matter, Arlen K. Bolstad, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. The notice of participation shall be filed and served as required by the Rules of Practice, 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-150, *Copies and format*. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by the Rules of Practice, 5 VAC 5-20-30, *Counsel*.

(6) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order, a copy of the application, and all materials filed with the Commission, unless these materials have already been provided to the respondent.

(7) On or before April 18, 2002, each respondent shall file with the Clerk an original and fifteen (15) copies of the testimony and exhibits by which it expects to establish its case and shall serve copies of the testimony and exhibits on counsel to the Company, counsel for Staff and on all other parties. The respondent shall comply with the Rules of Practice, 5 VAC 5-20-140, *Filing and service*, 5 VAC 5-20-150, *Copies and format*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(8) The Commission Staff shall investigate the Company's application and, on or before May 31, 2002, the Staff shall file



with the Clerk of the Commission an original and fifteen (15) copies of the prepared testimony and exhibits the Staff intends to present at the hearing. The Staff shall contemporaneously serve copies of such testimony and exhibits on the applicant and respondents in this matter.

(9) On or before June 18, 2002, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits that it expects to offer in rebuttal to direct testimony and exhibits of the Commission Staff and respondent. The Company shall also hand-deliver or electronically deliver a copy of such rebuttal testimony and exhibits to the Commission Staff and respondents.

(10) The Rules of Practice, 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: The Applicant and respondents shall respond to written interrogatories or data requests within ten (10) days after the receipt of such requests. Except as so modified herein, discovery and hearing preparation procedures shall be in accordance with Part IV of the Commission's Rules of Practice

(11) Forthwith upon receipt of this Order and thereafter, the Company shall make available for inspection during regular business hours copies of its application, testimony, exhibits, this Order, and all other materials filed in this proceeding at the Office of the Cumberland County Administrator, One Courthouse Circle, Cumberland, Virginia. The Company shall also make available copies of its application and other materials to

members of the public who may obtain them, at no charge, by making a request in writing for the same to counsel for the Company, Donald G. Owens, Esquire, Troutman Sanders Mays & Valentine, Post Office Box 1122, Richmond, Virginia 23218-1122.

(12) On or before March 15, 2002, the Company shall publish the following notice and a sketch map showing the location of the proposed facilities twice as display advertising (not classified) in a newspaper or newspapers of general circulation in Cumberland County:

NOTICE TO THE PUBLIC OF AN APPLICATION BY  
KINDER MORGAN VIRGINIA, LLC,  
FOR APPROVAL OF GENERATION FACILITIES IN  
CUMBERLAND COUNTY  
STATE CORPORATION CASE NO. PUE010722

On December 27, 2001, Kinder Morgan Virginia LLC ("Kinder Morgan" or "Company"), filed with the State Corporation Commission its application for a certificate to construct and operate an electric generating facility in Cumberland County. A description of the location follows:

The site is located on tracts of 32.96 acres and 1.68 acres, both owned by Cumberland County. It is adjacent to a closed municipal solid waste landfill, just southwest of State Routes 45 and 690 in northeastern Cumberland County. A map showing the approximate location accompanies this notice.

According to the Company's application, Kinder Morgan proposes to construct a 560 megawatt natural gas-fired electrical generation plant at this site in Cumberland County. The Company states that it plans to operate the plan up to 16 hours per day, and up to six days per week to provide

intermediate load power. The plant is also intended to provide smaller amounts of base load and peak load power. The Company proposes to start preliminary site clearing by July 1, 2002. Commercial operation would commence in the third quarter of 2004. According to the Company, the facility would operate as a merchant plant. It would not provide electricity or electric service to retail customers in Virginia.

A copy of the application and other materials may be obtained, at no charge, by making a request in writing to counsel for the applicant, Donald G. Owens, Esquire, Troutman Sanders Mays & Valentine, Post Office Box 1122, Richmond, Virginia 23218-1122. The application and other materials may also be inspected in the Commission's Document Control Center, Office of the Clerk of the Commission, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, during Commission business hours. Copies of the application may also be inspected during regular hours at the Office of the Cumberland County Administrator, One Courthouse Circle, Cumberland, Virginia.

On or before April 4, 2002, any person who expects to participate as a respondent in this proceeding as provided by the Commission's Rules of Practice and Procedure, 5 VAC 5-20-80 B, shall file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of a notice of intent to participate and shall serve a copy on counsel to the Company, Donald G. Owens, Esquire, Troutman Sanders Mays & Valentine, Post Office Box 1122, Richmond, Virginia 23218-1122, and on Commission Staff counsel assigned to the matter, Arlen K. Bolstad, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. Any organization, corporation, or government entity

participating, as a respondent must be represented by counsel as required by the Rules of Practice and Procedure, 5 VAC 5-20-30. The Commission's Order for Notice and Hearing gives the complete procedural schedule and instructions on participation in this case.

A public hearing will be held on July 9, 2002, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and evidence on the application. Members of the public who desire to comment on the Company's application will be afforded an opportunity to do so at the July 9, 2002, public hearing in this case. Persons desiring to participate in this manner should arrive at the hearing location indicated above at least 15 minutes before the start of the hearing. Upon arrival they should notify the Bailiff in the Commission's Courtroom of their desire to be heard as public witnesses in the hearing.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

A copy of the Order for Notice and Hearing may be obtained from the Clerk of the Commission. The unofficial text of the order may be viewed at the Commission's website:

<http://www.state.va.us/scc/caseinfo/orders.htm>. The Rules of Practice and Procedure and other information may also be viewed on the website.

Kinder Morgan Virginia, LLC

(13) On or before March 8, 2002, the Company shall serve a copy of this Order on the Board of Supervisors of Cumberland County, Virginia; the Honorable W. Tayloe Murphy, Jr., Secretary of Natural Resources, P.O. Box 1475, Richmond, Virginia 23218; Robert G. Burnley, Director, Department of Environmental Quality, P.O. Box 1009, Richmond, Virginia 23240-0009. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.

(14) On or before March 27, 2002, the Company shall file with the Clerk proof of the newspaper publication and proof of service required by ordering paragraphs (12) and (13).

(15) The Company's request for a waiver of the former requirement under 20 VAC 5-302-10 that the Company notify the Commission of its intent to file a petition to construct generating facilities at least 30 days prior to its filing is hereby granted.

(16) The Company may commence site preparation in advance of the Commission's approval of the Company's application herein, subject to the requirements set forth in this Order.